

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JUSTIN CREDICO : CIVIL ACTION
: :
v. : :
: :
WARDEN DAVID ORTIZ, et al. : NO. 15-0056

SÁNCHEZ, J. MEMORANDUM JANUARY 28th, 2015

Plaintiff, an inmate, has filed this civil action against members of the staff at the Federal Detention Center in Philadelphia. Currently before the Court is plaintiff's motion to proceed *in forma pauperis*. For the following reasons, the Court will deny the motion pursuant to 28 U.S.C. § 1915(g).

According to § 1915(g), a prisoner who on three or more prior occasions while incarcerated has filed an action or appeal in federal court that was dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted, must be denied *in forma pauperis* status unless he was in imminent danger of serious physical injury at the time that the complaint was filed. *Abdul-Akbar v. McKelvie*, 239 F.3d 307, 310-11 (3d Cir. 2001) (en banc). "[A] strike under § 1915(g) will accrue only if the entire action or appeal is (1) dismissed explicitly because it is 'frivolous,' 'malicious,' or 'fails to state a claim' or (2) dismissed pursuant to a statutory provision or rule that is limited solely to dismissals for such reasons, including (but not necessarily limited to) 28 U.S.C. §§ 1915A(b)(1), 1915(e)(2)(B)(i), 1915(e)(2)(B)(ii), or Rule 12(b)(6) of the Federal Rules of Civil Procedure." *Byrd v. Shannon*, 715 F.3d

117, 126 (3d Cir. 2013). Plaintiff accumulated at least three "strikes" for purposes of 28 U.S.C. § 1915(g) at the time he filed this action. See *Credico v. Milligan*, 544 F. App'x 46, 48 (3d Cir. 2013) (dismissing appeal as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i)); *Credico v. Unknown Official for U.S. Drone Strikes*, 537 F. App'x 22 (3d Cir. 2013) (same); *Credico v. CEO Idaho Nat'l Lab.*, 461 F. App'x 78 (3d Cir. 2012) (dismissing appeal as frivolous); *Credico v. Milligan*, E.D. Pa. Civ. A. No. 13-4111 (E.D. Pa.) (July 24, 2013 Memorandum and Order dismissing the case as frivolous); *Credico v. Unknown Official for Drone Strikes*, E.D. Pa. Civ. A. No. 13-1311 (E.D. Pa.) (April 15, 2013 Order dismissing the case as frivolous); *Credico v. CEO Idaho Nat'l Lab.*, E.D. Pa. Civ. A. No. 11-6025 (Oct. 4, 2011 Order dismissing the case as frivolous).

In light of plaintiff's three strikes, he may not proceed *in forma pauperis* unless he was in imminent danger of serious physical injury at the time he filed his complaint. There are no allegations in plaintiff's complaint that would allow this Court to find that plaintiff was in imminent danger of serious physical injury at the time that he filed this complaint. Accordingly, the Court will deny his motion to proceed *in forma pauperis*.